

ROLAND, FOGEL, KOBLENZ & CARR

ATTORNEYS AT LAW

1 COLUMBIA PLACE

ALBANY, NEW YORK 12207

RECEIVED

JAN 14 1994

FCC MAIL ROOM

KEITH J. ROLAND
USHER FOGEL
MARK L. KOBLENZ
MURRAY S. CARR*
EMILIO A. F. PETROCCIONE
RICHARD P. JACOBSON+

(518) 434-8112

(518) 462-4242

TELECOPIER (518) 434-3232

EDMUND A. KOBLENZ
1908-1972
A. ABBA KOBLENZ
1922-1979

GEORGE A. ROLAND*
COUNSEL

* ALSO ADMITTED TO FLORIDA BAR

+ ALSO ADMITTED TO CONNECTICUT BAR

January 13, 1994

FEDERAL EXPRESS

Hon. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: In the Matter of Policies
and Rules Concerning Toll
Fraud
Docket No. 93-292

Dear Secretary Caton:

Enclosed please find an original and nine copies of Comments submitted in the within proceeding on behalf of The Independent Payphone Association of New York, Inc. (IPANY).

A copy of these comments is also being served on AT&T, New York Telephone and the International Transcription Service.

Sincerely,


Keith J. Roland

KJR:tla
Enclosures

10 of Copies rec'd
101A B C D E

09

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

1415A
FOC FILE

In the Matter of Policies
and Rules Concerning Toll
Fraud

)
)
)

CC Docket No. 93-292

COMMENTS OF THE
INDEPENDENT PAYPHONE ASSOCIATION OF NEW YORK, INC.

Keith J. Roland
Roland, Fogel, Koblenz & Carr
One Columbia Place
Albany, New York 12207
(518) 434-8112

Albany, New York
January 13, 1994

SUMMARY

Independent public payphone operators (IPP's), commonly known as COCOTs, provide essential public communications services, particularly in inner city areas not fully served by Local Exchange Companies. COCOTs compete actively with both Local Exchange Companies and Interexchange Carriers, such as AT&T, in the public pay telephone market.

Over the years, IPP's have been subjected to massive toll fraud, and have taken all steps available to protect themselves, and their customers, from such fraud. These measures have included restrictively programming COCOT equipment; choosing "NONE" as a presubscribed interLATA carrier; and purchasing all available blocking and screening functions from Local Exchange Carriers, including Outward Call Screening and Billed Number Screening. Had these blocking and screening features worked properly, the toll fraud to which COCOTs have been exposed would not have occurred.

Unfortunately, neither AT&T nor the LEC's have any motivation to prevent this toll fraud; to the contrary, they benefit from it by destroying the business of their competitors.

In its recently decided United Artists and Atlantic Telco cases, this Commission adopted the principle that Independent Payphone Providers which purchase blocking and screening services, and which do not choose a presubscribed IXC, will not be responsible for toll fraud which could have been prevented by the proper functioning of those LEC services. Those

principles essentially follow the rules which have been established by the Florida Public Service Commission, as well as the Public Service Commissions of New York and Texas. They should be codified by this Commission in its rules, and all Local Exchange Carriers and interexchange carriers should be required to amend their tariffs to specify that Independent Payphone Providers which meet the criteria of the United Artists and Atlantic Telco decisions will not be subject to liability for toll fraud.

The Commission should go further, however, and require LECs and IXC's to adopt additional measures to prevent toll fraud. These include the monitoring of COCOT lines; the development of international blocking service which contains an option to also block calls to the 809 area code; by allowing presubscription for domestic calls, with international blocking; and by requiring AT&T (and other IXC's) to require verification and validation on incoming, international collect calls.

Liability for toll fraud which does occur should be placed on the party best able to prevent that fraud. In the case of domestic fraud, that liability should fall upon the LECs which could prevent fraud by providing reasonable and functioning blocking and screening services. In the case of incoming international fraud, liability should rest with AT&T, which could prevent such fraud by requiring verification by its foreign correspondents.

Finally, the existing unlawful discrimination between IPPs and LEC payphone operations must be eliminated. LEC

payphone operations should be placed in a fully separate affiliate, which will be subject to the same general rules with respect to toll liability as IPPs. Furthermore, the Commission should prevent any fraud losses which fall upon LEC payphone operations from being absorbed or cross-subsidized by LEC monopoly customers.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

JAN 14 1994

FCC MAIL ROOM

In the Matter of Policies)
and Rules Concerning Toll)
Fraud)

CC Docket No. 93-292

**COMMENTS OF THE
INDEPENDENT PAYPHONE ASSOCIATION OF NEW YORK, INC.**

The Independent Payphone Association of New York, Inc. (IPANY), through its attorneys, hereby responds to the Notice of Proposed Rulemaking issued herein on December 2, 1993, (FCC 93-496) which sought comments on proposals relating to liability for toll fraud.

As will be shown below, this Commission should adopt its own rules which codify the principles announced in the United Artists¹ and Atlantic Telco² cases and which have been adopted by certain state commissions (including the Florida PSC). Such rules would require Local Exchange Companies and Interexchange Carriers to file tariff provisions which eliminate any liability for toll fraud on the part of Independent Payphone Providers (IPP's) which have ordered blocking and screening services and not chosen a pre-subscribed IXC. The Commission's rules should place liability for such fraud on the party which

¹ United Artists Payphone Corp. v. New York Telephone and AT&T, Mem Opinion and Order, FCC 93-387, August 18, 1993.

² Atlantic Telco, Inc., Request for Declaratory Ruling, "Order", DA 93-1345, November 15, 1993 (Common Carrier Bureau).

can most easily recognize, and at the least cost prevent, such fraud, which is the local exchange carrier.

I. **PRELIMINARY STATEMENT**

IPANY represents owners and operators of independently owned public pay telephones, often referred to as COCOTs, in the State of New York. IPANY members provide services comparable to, and in competition with, pay telephone services provided by New York Telephone Company and certain Interexchange Carriers such as AT&T.

Over the past several years, IPPs have been subjected to massive toll fraud. In an attempt to prevent such fraud, COCOTs have programmed their equipment so that outgoing "1+" calls will be blocked, and so that incoming collect calls cannot be completed; they have also selected "NONE" or "NYC" as the presubscription choice.³ Thus, while local calls can be directly dialed from a COCOT, any effort to make an inter-LATA long distance call by dialing "1+" is blocked, with a recording indicating that the call cannot be completed.

IPPs further attempt to prevent fraud by ordering all available blocking and screening services from New York Telephone, including "Outward Call Screening" (OCS), "Billed Number Screening" (BNS), "Limited Inter-LATA Dialing" (LID), and

³ PIC "NONE" blocks all "1+" inter-LATA toll calls, while PIC "NYC" blocks all inter-LATA calls except those to the five counties of the Northern New Jersey privileged area.

International Direct Dial Blocking (IDDB).

Outward Call Screening generates specific identification digits, such as "07" or "88", which inform any LEC or IXC operator that a call is originating on a restricted COCOT line under circumstances where only outgoing credit card, collect, or billed to third number calls should be completed.

Billed Number Screening involves a data base accessed by LEC and IXC operators to determine whether a domestic incoming collect call or a domestic billed to third number call can be accepted at, or placed to, a specific telephone number. Thus, for example, if a caller in California seeks to place a collect call to a pay telephone in New York City, the operator of the IXC carrying the call is supposed to check the called number against the data base and, upon determining that it is a pay telephone, inform the caller that collect calls cannot be accepted at that station.

Limited Inter-LATA Dialing, or LID, blocks outgoing "10XXX + 1" calls, while passing "10XXX + 0" calls to IXC operators; LID is also supposed to block outgoing direct dial international calls.

International Direct Dial Blocking is designed to prevent direct dial international calls, but unfortunately does not block calls to the 809 area code, to which many fraudulent calls are directed.

Unfortunately, despite the fact that IPANY members have subscribed to all available blocking and screening features to

prevent toll fraud, such fraud continues at a massive level. As an example, attached hereto as Ex A are examples of AT&T bills issued to COCOT firms in both 1991 and 1993. They show "Operator Assisted" calls being made to numerous international locations, despite the fact the COCOT line on which these calls originated was equipped with LID, Outward Call Screening and Billed Number Screening. None of those calls should have been possible.

Another type of fraud recently caused by LEC negligence involves use of certain "800" numbers which, due to failures in LEC central office switches, improperly returned an unrestricted dial tone to the caller. Upon seizing that dial tone, perpetrators were able to dial any domestic or international number, with the charge billed to the IPP. Examples of such calls are attached as Ex B.

The only possible explanation for the fraud experienced by IPANY members is the failure of LEC blocking and screening services, or the failure of IXC operators to consult and honor the validation data bases. New York Telephone and AT&T point fingers at each other, while the innocent party, the IPP, is held responsible for the fraud.

As will be discussed in greater detail below, New York Telephone and AT&T have no incentive to correct the deficiencies in existing blocking and screening services; indeed, to the extent COCOTs are burdened with massive fraud, New York Tel and AT&T are actually benefitted through the creation of conditions which help drive their competitors out of business.

II. THIS COMMISSION SHOULD PROMULGATED RULES ADOPTING THE SAME PRINCIPLES ESTABLISHED IN NEW YORK, TEXAS AND FLORIDA

The subject of toll fraud - and a determination of which party should be liable for such fraud - has previously been considered by a number of state regulatory agencies. In several cases, these Commissions have held that IPP's which purchase blocking and screening services should not be held liable for fraud.

Weighing both the law and the equities of the situation, the New York State Public Service Commission has determined that IPP's should not be held responsible for toll fraud when they have purchased the appropriate blocking and screening services from Local Exchange Carriers.

Specifically, in an Order adopted on April 17, 1991, the New York Commission declared that "call aggregators should not have to pay interexchange carriers for fraudulently placed calls which result from the failure of the interexchange carrier or the Local Exchange Carrier to provide services designed to eliminate such fraud to begin with". The Commission continued:

"It is obvious that a customer should not have to pay for fraudulent calls if the placement of these calls results from the failure of screening services, or related procedures, provided by Local Exchange Companies and/or interexchange carriers. We routinely receive complaints from consumers dealing with fraudulent calls. Therefore, we recommend that all Local Exchange Companies and interexchange carriers be advised that complaints from COCOT providers about fraudulent calls will likewise be resolved in

favor of complainants, if the calls result from the failure of services and procedures rendered by these companies".

Memorandum from the Communications Division to the Commission,
April 8, 1991 re New York Telephone tariff revisions to withdraw "10XXX Restrict Service", Approved As Recommended and So Ordered by the Commission and Filed -Session of April 17, 1991, mimeo at page 9-10. (Copy attached hereto as Ex C).

The Texas Public Utility Commission has also reached that conclusion. In 1990, it adopted rules which preclude a non-presubscribed IXC from billing an aggregator for local or toll messages originated at the subscriber's location if (1) the aggregator had subscribed to originating line screening, and (2) the aggregator had provided thirty days' notice to the IXC that originating line screening was available.

Specifically, Section 23.55 of the Rules of the Public Utility Commission of Texas, published in the Texas Register on May 11, 1990, at 15 TEX REG 2684, reads as follows:

(c) Access to interexchange carriers by 10XXX + 0 (whether 10XXX + 0 + or 10XXX + 0-) dialing shall not be blocked if the end office serving the originating line has originating line screening capability. A nonpresubscribed interexchange carrier shall not bill the call aggregator or the presubscribed interexchange carrier for local or toll messages originated at the call aggregator's facility by use of 10XXX + 0 (whether 10XXX + 0 + or 10XXX + 0-) dialing if the call aggregator:

(i) has subscribed to the necessary local exchange carrier - provided outgoing call screening to ensure that appropriate originating line screening is transmitted with each call; and

(ii) has provided 30 days notice to

the interexchange carrier that
originating line screening is
available.

The rule promulgated by the Florida Public Service Commission on February 3, 1993, which this Commission has tentatively endorsed, would "effectively release the pay telephone provider from liability for the charges resulting from certain types of fraudulent calls if the provider has purchased call screening for the line." Florida Public Service Commission Request to Review Interstate and International Tariff Provisions Relating to Liability for Toll Fraud Charges, February 18, 1993, pp. 2-3, referring to Florida Administrative Code Rules 25-4.076, 25-24.475, and 25-24.515, and Florida PSC Order No. PSC-93-0109-FOF-TP.

IPANY endorses the concept underlying the New York, Texas and Florida PSC rules, i.e., that an Independent Payphone Provider which takes reasonable steps to protect itself from incurring toll fraud, including ordering from the Local Exchange Carrier screening and blocking services, and which affirmatively opts not to prescribed to an interexchange carrier by selecting "PIC NONE",⁴ should not be held liable for toll fraud which could have, and should have, been avoided had the blocking and screening functions worked properly. This, in essence, is the

⁴ The rules should provide that in the New York City Metropolitan area, an IPP may chose "PIC NYC" instead of "PIC NONE". If "PIC NYC" is chosen, the IPP would be liable for fraudulent direct dial calls to the northern New Jersey area.

general holding of this Commission's well reasoned Orders in the United Artists and Atlantic Telco decisions.

Because the State Commission Orders would appear to be jurisdictionally applicable only to intrastate toll fraud, which constitutes a very small portion of the overall problem, parallel rules must be adopted by this Commission to govern interstate and international calls.

AT&T itself would seem to support adoption of a formal rule limiting COCOT liability for fraudulent calls. Thus, in reply comments submitted to this Commission on April 26, 1991, in Docket 91-35,⁵ AT&T urged the Commission to unblock "10XXX + 0" calls on the ground that there would be no increase in toll fraud. In support of its argument, AT&T stated that "AT&T recommends that the Commission consider adopting a rule which recognizes the unique circumstances of the operator services industry and which utilizes the Texas PUC's method of determining responsibility for fraudulent calling." (AT&T Reply Comments, p. 9).

AT&T described the Texas rule as follows:

"Under this approach, if an aggregator has ordered appropriate originating line screening (OLS) and 10XXX + 1 blocking from an LEC; has monitored its phones to insure that these features were, in fact, put into service by the LEC; and has periodically monitored its equipment to insure that the features continue to function over time, the aggregator would not be responsible for the

⁵ In the Matter of Policies and Rules concerning Operator Access and Pay Telephone Compensation.

fraudulent calls which originated from its telephones. By the same token, if the operator services provider has completed 10XXX + 0 calls and billed them back to the aggregator despite the receipt of appropriate OLS information from the LEC that such billing is not authorized, the OSP would be required to assume the loss associated with that fraud. Finally, if the LEC has failed to adequately provide OLS information or has passed 10XXX + 1 calls to an OSP, despite the aggregator's request for 10XXX + 1 blocking, the LEC would be held financially responsible."

AT&T Reply Comments, Docket 91-35, April 26, 1991, pp. 9-10.

III. LIABILITY FOR TOLL FRAUD SHOULD BE ASSIGNED TO THE LOCAL EXCHANGE CARRIER OR TO AT&T, DEPENDING ON THE TYPE OF FRAUD

The Commission has asked for comments on the method by which liability for toll fraud should be apportioned. IPANY believes that question should be answered by recognizing which entity is in the best position to deter such fraud.

As this Commission and state commissions have properly determined, the initial burden in preventing toll fraud should rest with Independent Payphone Providers. That burden can, however, be fully satisfied where the IPP orders all available blocking and screening services, and (subject to the clarification discussed below) does not select a pre-subscribed IXC.

Once those steps are taken, the IPP has no other reasonable opportunity to prevent fraud. Public pay telephones (whether provided by LEC's or IPP's) cannot be subject to twenty-

four hour per day surveillance.⁶ Even if such monitoring were possible, there would be no impact on "clip on" fraud which occurs away from the pay telephone itself. Thus, the only reasonable method to prevent unauthorized toll calls is to have properly functioning blocking and screening services which intercept all calls at the central office, regardless of whether the calls originated at the pay telephone or at a "clip on".

There is absolutely no reason why local exchange carriers cannot provide adequate and functioning blocking and screening services. Where those services are installed, they have proven effective in the great majority of cases. In those instances where they have failed, the failure has almost always been due to error or negligence on the part of the LEC, and in particular a failure to properly enter and execute the order for blocking and screening services after it is received.

As discussed earlier, fraud has occurred because of the LEC failure to transmit the screening codes to the IXC's, or because of the failure to enter restricted line numbers in the BNS data base. Absolutely no excuse for such failure exists.

The LEC's have the ability to assure that coding information is transmitted to all IXC operators at all times, but have failed to meet that obligation. Thus, it has been possible

⁶ In the Chartways decision, the Commission noted the PBX customer had the capability to restrict access to and egress from its PBX. In contrast, restricting access to public telephones located in public areas and specifically designed and intended to be accessed by the general public is not possible.

for perpetrators to first reach a LEC operator and request transfer to an IXC operator in order to complete a toll call. Apparently, in this situation, the LEC does not transmit the screening digits to the IXC operator when the call is transferred. If that is the case, it is an inexcusable design failure, a situation which long ago should have been identified and corrected by the LECs. The LEC's failure to develop a security system which assures that screening digits (as well as other restrictive information) is passed through to all IXCs and all IXC operators, in all calling scenarios, constitutes negligent or irresponsible management for which the LECs should and must be held accountable.

The same is true with respect to fraud on incoming domestic calls. If the LEC properly enters line restrictions into the validation data base, any interexchange carrier operator attempting to place a collect call to that number, or charge a call on a third party basis, will be told by the BNX data base such calls cannot be completed. The only likely reason for failure of that safeguard is the LEC's failure to correctly enter the data. Again, this is an activity solely under the control of the LEC.

Accordingly, IPANY recommends that where appropriate blocking and screening services have been ordered from an LEC, and toll fraud nonetheless results, the LECs should bear sole responsibility for calls which could have been prevented had these services functioned properly.

On the other hand, there may be one type of toll fraud, international incoming collect calls, where the LECs may not be primarily at fault.

It appears that the BNS validation data base is accessed by IXC operators only on domestic calls. In contrast, where a collect call originates overseas, and is handled by a foreign operator, the call will be placed to, and can be accepted at, any telephone (including a pay telephone), without any attempt at verification or validation by the foreign operator.

That situation, which cannot under any circumstances be tolerated, is the fault of AT&T.

AT&T has agreements in place with its foreign correspondents governing the manner in which inbound international collect calls are placed and settled. AT&T has never required that its foreign correspondents utilize a data base, or in any other way verify the status of a called number before completing an inbound collect call. Accordingly, an individual bent on fraud is able to ask a foreign operator to place a collect call to any U.S. telephone number, including an IPP or LEC pay telephone, and there will be no verification on the status of that call.⁷

In this manner, millions upon millions of dollars of international incoming toll fraud is perpetrated every year -

⁷ IPP's program their phones not to ring on incoming calls. However, this mechanism can also be defeated by having the incoming collect call accepted at a "clip on" station.

almost all of which could be prevented by AT&T if it simply required verification on international collect calls, as now is supposed to occur with domestic collect calls. But despite numerous requests that AT&T establish such requirements, AT&T has failed to take any action. That failure constitutes both gross negligence and deliberate anti-competitive conduct.⁸

As indicated above, this Commission should hold the LECs and AT&T liable for toll fraud (if blocking and screening services have been purchased) because they are in the best situation to implement network protections which can eliminate such fraud. However, an equally strong reason exists for placing liability on those parties.

The unfortunate fact is that under existing rules, neither the LECs nor AT&T have any economic motivation to deter such fraud. Indeed, fraud actually benefits them by driving competitors out of business.

First, LEC payphones are essentially immune from

⁸ In 1988, New York PSC filed an Informal Complaint with this Commission (IC 88-00426) regarding AT&T's practice of charging COCOTs for fraudulent calls originating in the 809 area code. In connection therewith, Kathie A. Kneff, Chief, Informal Complaints and Public Inquiries Branch, Enforcement Division, wrote to AT&T on February 3, 1989 expressing concern over AT&T's practice of billing COCOTs for fraud, as violative of Section 202 of the Communication Act. The Bureau also expressed great concern over the failure of AT&T's foreign correspondents to verify incoming collect calls, and directed AT&T to encourage foreign PT&T's to access AT&T's data base. It does not appear AT&T has ever made any serious effort to achieve such results. (See Ex D attached hereto).

liability for toll fraud. While AT&T will pursue IPPs which have been the victims of fraud, it will not do the same for the LECs. Second, the LEC's earn access charges on all calls, and must be paid by IXC's whether or not the IXC's collect the toll charges involved. Thus, the LECs have little motivation to expend the resources necessary to develop adequate safeguards.

After all, why should the LECs spend money to prevent fraud for which only their competitors will be liable? LECs and Independent Payphone Providers are active competitors, and to the extent LECs can saddle their competitors with the heavy costs of toll fraud, they can help drive IPP's from the marketplace.

The same is true with respect to AT&T. IPPs compete with AT&T's public telephones in hotels, transportation terminals and other public areas. AT&T hounds its competitors daily as it files suit upon suit in federal court demanding payment of hundreds of thousands of dollars in toll fraud. In many cases, commencement of that litigation leads suppliers to refuse to provide goods or services to IPPs, and often leads to the drying up of critically needed financing.

On international incoming collect calls, AT&T also benefits. Under the settlement procedures generally in effect, collect calls originating overseas are considered billed to domestic telephones, and AT&T receives "credit" for the revenues associated with those calls in the settlement's process.

Because control of toll fraud rests primarily, if not exclusively, in the hands of LECs and AT&T, the only way to

combat that fraud is to eliminate incentives for LECs and AT&T to benefit from such fraud, and to penalize those companies for any fraud which does occur. There should be little doubt that, if AT&T and the LECs are held responsible for toll fraud made possible only through their failure to implement just, adequate and reasonable security procedures, those carriers will very quickly find some method to prevent fraud.

If LECs are to be held liable for toll fraud associated with their own pay telephones, or for any losses suffered by IPPs due to the failure of LEC blocking and screening services, this Commission can be assured that the LECs will quickly find solutions to any "technical problems" which now exist with implementation of blocking, screening and other security measures.

Similarly, if AT&T is to be held responsible for toll fraud imposed on IPPs, as a result of its failure to implement verification procedures on international calls, AT&T would very quickly find a solution to that problem. Undoubtedly, AT&T could, in cooperation with the LECs and its foreign correspondents, provide access to the validation data base for international collect calls. AT&T could also refuse to process any traffic which is not first subject to validation, and under such circumstances, all foreign correspondents would quickly

implement validation procedures.⁹

IV. ADDITIONAL SECURITY PROCEDURES SHOULD BE REQUIRED

All LECs should be required to provide to IPPs reasonable, adequate, and functioning blocking and screening services at reasonable costs. Similarly, AT&T (and other interexchange carriers which have foreign correspondents) should be required to mandate validation and verification on all incoming international collect calls through use of the BNS data base.

Other protective measured steps should also be required by this Commission.

A major part of the fraudulent toll calling involves calls from the mainland U.S. to and from the 809 area code. Yet, the international direct dial blocking (IDDB), which this Commission has required LECs to provide, will not block calls to the 809 area code, even though the territory covered is, even for Puerto Rico, an international destination.¹⁰

The fact that the 809 area code is part of the "North

⁹ The same rule should apply to any IXC which has arrangements with foreign correspondents to process incoming international calls.

¹⁰ Puerto Rico's Commonwealth status, and the Territorial status of the U.S. Virgin Islands, should not require those locations to be considered a domestic destination. Because of the serious fraud problem involved in calls to these areas, for purposes of toll fraud liability, they should be subject to the same designation as calls to other Caribbean locations.

American Numbering Plan" cannot justify failure to provide critically needed blocking on calls to that area. Any inconvenience in creating a separate category for 809 calls is greatly outweighed by the massive fraud associated with calls to, and from, that area. Little reason exists why a central office product cannot be developed which blocks not only traditional "011" international calls, but also, if requested by an IPP (or other party seeking to prevent toll fraud) 809 calls as well.¹¹

The fact that an IPP may choose a presubscribed carrier for domestic calls should not subject that IPP to unlimited liability for all international calls. Thus, to the extent that the United Artists and Atlantic Telco decisions establish as a pre-requisite for immunity from liability the rejection of any presubscribed IXC, that principle should be modified to permit an IPP to select a presubscribed carrier but to also order international blocking. In those circumstances, an IPP could complete direct dial domestic calls through its presubscribed carrier, but could protect itself from liability for

¹¹ Because many IPP's may affirmatively choose to handle traffic to the 809 area code (and thus assume certain risks), 809 blocking should be an option to accompany, but not automatically be included in, IDDB. Providing a "menu" of blocking options is both common and easily accomplished, as evidenced by several "tiers" and combinations of blocking services already available from LEC's.

international calls (including calls to the 809 area code).¹²

IPP's should not be subject to an "all or nothing" rule. There may be legitimate and significant reasons why an IPP (or other customer) needs to make domestic direct dial calls, but also wishes to block (and protect itself from liability on) international direct dial calls. It should be a fairly easy to program central office switches to permit domestic 1+ calls but block 809 and international direct dial calls, and that option should be made available to any party requesting it.

Next, the LECs, and perhaps the IXC's, should be required to monitor COCOT lines for fraud.

It appears that the larger interexchange carriers, and the LECs, have the ability to monitor usage on telephone lines, on a real time basis, to detect sudden spurts of toll calling, and particularly international toll calling.¹³ It is, of course, to their own advantage to do so.

IPANY suggests that IPPs seeking a second line of defense against fraud (and thereby helping to insulate the IXC's themselves from incurring losses), be permitted to submit to

¹² The IPP should also be able to purchase BNS and Outward Call Screening. Arrangements could be made with the pre-subscribed IXC to permit 1+ calls, but other IXC's (which could be accessed on a 10XXX + 1 basis) would block such calls.

¹³ See, for example, services such as AT&T "NET PROTECT", "SPRINT GUARD" and "MCI DETECT". Calling card usage is also currently monitored by IXC's, with sudden spurts in international calling leading to immediate invalidation of certain calling cards (sometimes without notice to the card holder).

larger IXC's (and IXC's be required to accept) a list of IPP ANI's on which toll calling is to be blocked. The IXCs could then monitor those particular ANIs for toll calling, and be required to report any unusual activity directly to the IPP involved.¹⁴

V. THIS COMMISSION SHOULD REQUIRE UNIFORM, NON-DISCRIMINATORY TREATMENT BETWEEN IPP'S AND LEC PAY TELEPHONES WITH RESPECT TO FRAUD LIABILITY

One of the major difficulties with the current arrangement is the unlawful and undue discrimination suffered by IPPs with respect to liability for toll fraud.

As discussed earlier, and as the Commission is aware, interexchange carriers do not seek to hold LEC payphone operations liable for toll fraud, while they do demand payment from similarly situated IPP's. Absolutely no rational basis exists for that unlawful discrimination.

Indeed, by continuing to allow LEC installations to be exempt from toll fraud, this Commission removes much of the

¹⁴ The submission of ANI lists to interexchange carriers should be an option, but not a requirement, for IPPs, and should not result in any additional costs being imposed upon the IPPs. Nor should IPPs be liable for any toll fraud, for which they would not otherwise be liable, in the event the IPP does not submit its ANI list to each and every interexchange carrier. The reason for this is that the IPP has already been required to take the initial steps to prevent fraud by purchasing, at considerable expense, the appropriate blocking and screening services from the LECs. Due to the extremely limited manpower and resources of many IPPs, constant updating and transmittal of ANIs to each and every interexchange carrier may well constitute an extraordinary and unreasonable burden.

incentives for the LECs to develop and implement appropriate fraud protection measures. So long as the LECs do not suffer from toll fraud, but their competitors do, the LECs will continue to have every incentive to avoid solving the problem.

IPANY believes that the public pay telephone operations of LECs should be placed into fully separate affiliates, with those affiliates being subject to the same rights, obligations and liabilities as IPPs. Thus, if IPPs are liable for toll fraud, LEC pay phones will similarly be held liable and, most importantly, will not have the ability to be cross subsidized by monopoly ratepayers.

Requiring LEC payphones to be placed in separate affiliates fits into IPANY's proposal that the LEC be responsible for the proper functioning of blocking and screening services, and remain liable for toll fraud which results from the failure of those services. Liability rules would apply equally to IPPs and to LEC payphones without the ability of LEC's to circumvent liability for fraud by transferring it to captive ratepayers. Thus, the Commission must hold that LEC payphone operations will be held responsible for toll fraud to the same extent as IPPs, and to assure that this responsibility is meaningful, the Commission must also preclude any LEC payphone fraud from being absorbed or cross-subsidized by LEC monopoly ratepayers.

VI. RATES FOR BLOCKING AND SCREENING SERVICES SHOULD BE JUST AND REASONABLE, AND COST BASED